

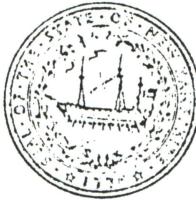
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DEPUTY ATTORNEY GENERAL  
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Attorney General  
Concord

November 17, 1975

Mr. Arthur H. Fowler, Comptroller  
Department of Administration  
and Control  
State House Annex  
Concord, New Hampshire 03301

Dear Mr. Fowler:

By letter dated November 3, 1975 you have asked us to advise you on the formula to be used in calculating the amount of benefits payable under RSA 491:2, IV (Supp. 1974) to the unremarried widow of a judicial referee who had retired from the Superior Court. It is our opinion that such a widow is entitled to an annual benefit equal to one-half of the currently effective annual salary carried by the position last held by the deceased spouse immediately prior to his retirement from the Superior Court.

The statute cited provides that such a widow "shall annually be entitled to one-half of the currently effective annual salary payable for the office last held by such deceased justice...." The answer to your question is clear, then, once one identifies "the office last held" by the decedent. The "office last held" would be obviously the office of Associate Justice or Chief Justice of the Superior Court were it not that a justice who retires with retirement benefits usually becomes a judicial referee under RSA 493-A:1 (Supp. 1973). RSA 493-A:2 (Supp. 1973) provides that judicial referees shall be paid "an annual sum equal to three-fourths of the currently effective annual salary of the office from which he is retired." If the "office last held" by the decedent is that of judicial referee the unremarried widow's benefit will be one-half of three-fourths of the salary payable to an associate or chief justice, as the case may be, rather than one-half of the full salary.

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The strongest reason we can find on which one might conclude that the position of judicial referee was the "office last held" by the decedent is one of linguistic difference. RSA 491:2, II (Supp. 1974) provides that a justice who retires with a proper combination of age and service shall receive during the remainder of his life "an amount equal to three-fourths of the currently effective annual salary of the office from which he is retired." (Emphasis supplied.) If a justice's widow's benefit is intended to be one-half of that same salary the clearest way to provide that would be by use of the same language, rather than by reference to the "office last held" by the decedent in subsection IV of the same statutory section. Nonetheless, we are of the opinion that by using the phrase "office last held" the Legislature did not intend to mean something different from "office from which he is retired." Where conclusions based on textual analysis and comparison are not compelled, they must be rejected when their results would be "unfortunate," Peterborough Savings Bank v. King, 103 N.H. 203, 209 (1961), or "illogical" General Electric Company v. Dole, 105 N.H. 477, 479 (1964). There would be some unfortunate and illogical consequences of reading "office last held" to refer to the position of judicial referee for purposes of computing a widow's benefit.

The first consequence of that reading would be that few, if any, unremarried widows of retired justices would receive annual benefits equal to one-half of the current salary of a justice occupying the decedent's position on the Court. In itself this would be of no consequence if the Legislature had so intended. The journals of the two houses of the Legislature for the 1974 session reveal nothing directly on substantive legislative intent, but the Governor's message on signing the bill enacting the statute in question set out at 1974 Journal of the House 418-19 expresses the Governor's view on signing the bill that on retirement a justice would receive "3/4 of his salary" and that in the event of death a widow in the circumstances we are considering would receive "1/2 of his annual salary." It seems clear that the Governor intended "salary" to refer to the same amount in each instance.

The second consequence of reading "office last held" to refer to the position of judicial referee with its lower salary would be the creation of two classes of widows' benefits, manifestly unfair to the widows receiving the lower benefits. All the unremarried widows whose decedents had been judicial referees would, on this theory, receive annual benefits equal to three-eighths (one-half of three-fourths) of the currently effective salary for

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the position on the Court from which the decedent retired. But a Superior Court Justice or Chief Justice who retires without ten years of service on the Court does not become a judicial referee. RSA 493-A:1 (Supp. 1973). Nor, of course, does a justice who is retired because of permanent disability under RSA 490:2, I (Supp. 1973) or who dies in office. Yet under RSA 491:2, III and IV (Supp. 1973) their unremarried widows would be entitled to annual benefits equal to one-half of the currently effective salary for the "office last held," and of course the "office last held" by these decedents would necessarily be the position on the Court held by the decedent. Hence, on the theory under consideration unremarried widows of justices who served less than ten years, or who died while on the Court, or who did not actively complete their terms as justices because of disability would receive higher benefits than the widows of those who served longer on the Court and who continued to serve the State as judicial referees after retiring from the Court. These would certainly qualify as "unfortunate" or "illogical" results, and the interpretation on which they would occur must be rejected. Hence, we have concluded that "office last held" occurring in RSA 491:2, IV (Supp. 1973) refers to the position last held on the Superior Court, not to the position or function of judicial referee.

Sincerely,

*Warren B. Rudman*  
Warren B. Rudman  
Attorney General

*David H. Souter*  
David H. Souter  
Deputy Attorney General